

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: : 10-23916 (RDD)  
:   
: 300 Quarropas Street  
JEFFREY J. FORTUNATO and : White Plains, New York  
ELIZABETH M. FORTUNATO, :   
: March 12, 2014  
Debtors. :  
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TRANSCRIPT OF MOTION FOR CONTEMPT FILED BY  
MICHAEL H. SCHWARTZ; MOTION FOR CONTEMPT  
TO HOLD JP MORGAN CHASE BANK, NA FOR FAILING TO  
COMPLY WITH RULE 3002.1(b)  
BEFORE THE HONORABLE ROBERT D. DRAIN  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: MICHAEL SCHWARTZ, ESQ.  
Michael H. Schwartz, PC  
One Water Street  
White Plains, New York 10601

For JP Morgan Chase: PATRICK D. FLEMING, ESQ.  
Morgan, Lewis & Bockius  
101 Park Avenue  
New York, New York 10178

Court Transcriber: SHARI RIEMER  
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Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service

1 (Proceedings began at 10:37 a.m.)

2 THE CLERK: Jeffrey and Elizabeth Fortunato.

3 MR. SCHWARTZ: Good morning, Michael Schwartz on  
4 behalf of the debtors.

5 MR. FLEMING: Good morning, Your Honor. Patrick  
6 Fleming, Morgan, Lewis & Bockius on behalf of JP Morgan Chase  
7 Bank.

8 MR. SCHWARTZ: I'd like to ask for a short  
9 adjournment on my motion so I can respond to the [inaudible]  
10 March 5<sup>th</sup> if that's okay with the court. Nothing to happen in  
11 the interim.

12 THE COURT: Well, I guess that's fine. No one  
13 attached the underlying loan modification. So we went back  
14 and got it from the attachment to the order and I did want to  
15 give you all a couple of thoughts on it because I think you  
16 all should be able to work this out depending on the answers  
17 to my questions.

18 It appears to me that first, that loan modification  
19 was signed by the debtors and it was attached to the order  
20 that I entered and put on the docket and I was able to get it  
21 immediately and your predecessor counsel would have gotten  
22 automatic notification on it. So the idea that Chase didn't  
23 have the final modification is silly.

24 On the other hand, the modification acknowledges  
25 that the tax escrow may change. So I think that if what the

1 Fortunatos are saying is that the payment is set in stone  
2 under the deal that's really not correct. If the local taxing  
3 authority raised their taxes and there's a new -- tax escrow  
4 then that will change the numbers.

5 Finally, it appears to me that it was entirely  
6 unclear and probably Chase's fault for sending the bills the  
7 way it did and that I think is the reason for the insurance  
8 getting screwed up. So I don't see a particularly good basis  
9 for the debtors having to be responsible for even the  
10 insurance, the new insurance. I don't know. Is the insurer  
11 an affiliate of Chase?

12 MR. FLEMING: Yes. On that point, Your Honor, we've  
13 already retroactively [inaudible] given the [inaudible].

14 THE COURT: And going forward too. That's fine.  
15 That was one of my questions. I thought that's what your  
16 reply said but I just wanted to make sure of that.

17 MR. FLEMING: I'm not -- I don't [inaudible] I just  
18 haven't seen that [inaudible] asking for is an accounting.  
19 [Inaudible] would be [inaudible].

20 THE COURT: That's fair. So you guys probably should  
21 set up a call --

22 MR. FLEMING: That would be great.

23 THE COURT: -- to go through that and I guess --  
24 again, I know there was an increase in the payment in I guess  
25 the next to last bill or the most recent bill. If a portion

1 of that -- if all or a portion of that increase is  
2 attributable to changed taxes then I think your clients are  
3 going to have to pay it.

4 MR. FLEMING: I appreciate that. I just don't  
5 think -- if anything [inaudible].

6 THE COURT: So I think an adjournment makes sense.  
7 You all should talk about what the current state of the bill  
8 is going forward that these people have to pay.

9 As far as the sanction is concerned, I don't think  
10 it's really a contempt sanction. I think it's a sanction  
11 under the rule itself, 3002.1, and frankly I think Chase has  
12 taken care of most if not all of the issues or will take care  
13 of them from what I'm hearing about it. So for me that's --  
14 the only sanction I would consider at this point would be some  
15 reasonable amount of attorney's fees to get to that point.

16 MALE VOICE: [Inaudible]

17 THE COURT: So maybe you can talk about that. I'm  
18 not looking for any sort of punitive sanction or anything like  
19 that.

20 MR. SCHWARTZ: I'm not either.

21 THE COURT: So we'll adjourn this to April 23. Will  
22 that give you all time to go through that?

23 MR. SCHWARTZ: I would think so.

24 THE COURT: All right. There are not a lot of cases  
25 on this rule yet but there's a pretty good one or more than a

1 pretty good one. There's an instructive one from a judge in  
2 Chicago, 491 B.R. 886, In re: Tollios.  
3 (Proceedings concluded at 10:45 a.m.)

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer

7 Dated: April 28, 2014  
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